

## **BILL ANALYSIS**

C.S.H.B. 148  
By: Burkett  
Elections  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

In certain localities, individuals receive compensation for harvesting mail-in ballots or for going door to door collecting eligible ballots and posting them on behalf of voters. Such individuals are compensated on a per-ballot basis. There currently is no limit on the number of times a person may act as a courier for mail-in ballots in a given election, and concerned parties contend that some mail-in ballot harvesters provide unlawful assistance or unlawful witness to voters and may even electioneer in the presence of an active ballot. C.S.H.B. 148 seeks to remedy this situation by, among other provisions, increasing the penalties for certain related offenses.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 148 amends the Election Code to prohibit a person who possesses an official carrier envelope containing a marked ballot in order to deposit the envelope in the mail or with a common or contract carrier and who provides the identifying information required for such a person from depositing in the mail or with a common or contract carrier more than 10 carrier envelopes containing ballots voted by other persons in an election, unless a carrier envelope contains a ballot voted by a member of the U.S. military or the spouse or dependent of such a member. The bill makes it a Class A misdemeanor offense to knowingly violate this prohibition or to knowingly direct a person to engage in such conduct. The bill increases from a Class B misdemeanor to a Class A misdemeanor the penalty for acting as a witness for a voter in signing a carrier envelope certificate and knowingly violating requirements applicable to such signing and for a person other than the voter depositing the carrier envelope in the mail or with a common or contract carrier without the person's signature, printed name, and residence on the envelope's reverse side.

C.S.H.B. 148 exempts an employee of a state licensed care facility or state-certified facility not subject to state licensure where a voter resides who is working in the normal course of the employee's authorized duties from the application of offenses relating to the deposit of a carrier envelope without the required information on the envelope's reverse side or to the deposit in the mail or with a common or contract carrier of more than 10 such envelopes containing ballots voted by other persons in the election and from the application of an offense for possessing an official ballot or official carrier envelope provided to another person. The bill establishes that it is an affirmative defense to prosecution under these provisions that a person deposited carrier envelopes containing ballots voted by another person or possessed an official ballot or official carrier envelope provided to a voter if the voter requested assistance from the person in depositing the envelope and that assistance was provided in the course of the person's normal duties as caretaker of the voter.

C.S.H.B. 148 makes it a misdemeanor offense to compensate another person to engage in the

conduct prohibited by the bill relating to the limitation on depositing carrier envelopes containing ballots voted by other persons and makes such offense punishable by confinement in jail for a term of not more than one year or less than 30 days or such confinement and a fine not to exceed \$4,000. The bill enhances the offense from a misdemeanor to a state jail felony if it is shown on the trial of such an offense that the defendant was previously convicted two or more times for the same conduct.

C.S.H.B. 148 removes the exemption from the application of offenses relating to actions on a carrier envelope by a person other than the voter and the exemption from the application of an offense for knowingly failing, in assisting a voter in preparing a ballot to be voted by mail, to enter the person's signature, printed name, and residence address on the voter's carrier envelope for a person registered to vote at the same address as a person applying for a ballot to be voted by mail.

C.S.H.B. 148 includes the limitation on depositing carrier envelopes containing ballots voted by other persons established under the bill's provisions to the textual material required to be printed on the reverse side of an official carrier envelope.

### **EFFECTIVE DATE**

September 1, 2013.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 148 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

#### **INTRODUCED**

SECTION 1. Section 64.036(d), Election Code, is amended to read as follows:

(d) An offense under this section is a state jail felony [~~Class A misdemeanor~~].

SECTION 2. Section 86.0051, Election Code, is amended by adding Subsection (b-1) and amending Subsections (c), (d), and (e) to read as follows:

(b-1) A person may not deposit in the mail or with a common or contract carrier more than ~~two~~ carrier envelopes containing ballots voted by other persons in an election.

(c) A person commits an offense if the person knowingly violates Subsection (b) or (b-1). It is not a defense to an offense under this subsection that the voter

#### **HOUSE COMMITTEE SUBSTITUTE**

**No equivalent provision.**

SECTION 1. Section 86.0051, Election Code, is amended by adding Subsections (b-1) and (f) and amending Subsections (c), (d), and (e) to read as follows:

(b-1) A person ~~to whom Section 86.006(f)(4) applies~~ may not deposit in the mail or with a common or contract carrier more than ~~10~~ carrier envelopes containing ballots voted by other persons in an election. ~~This subsection does not apply to a carrier envelope containing a ballot voted by a member of the armed forces of the United States or the spouse or dependent of a member.~~

(c) A person commits an offense if the person knowingly violates Subsection (b) or (b-1) or knowingly directs a person to engage in conduct that violates Subsection

voluntarily gave another person possession of the voter's carrier envelope.

(d) An offense under this section is a state jail felony ~~[Class B misdemeanor]~~, unless the person is convicted of an offense under Section 64.036 for providing unlawful assistance to the same voter in connection with the same ballot, in which event the offense is a [state jail] felony of the third degree.

(e) Subsections (a) and (c) do not apply if the person is related to the applicant within the second degree by affinity or the third degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code~~[-or is registered to vote at the same address as the applicant]~~. Subsection (c) does not apply to an employee of a state licensed care facility where the voter resides who is working in the normal course of the employee's authorized duties.

No equivalent provision.

~~(b-1).~~ It is not a defense to an offense under this subsection that the voter voluntarily gave another person possession of the voter's carrier envelope.

(d) An offense under this section is a Class A [B] misdemeanor, unless the person is convicted of an offense under Section 64.036 for providing unlawful assistance to the same voter in connection with the same ballot, in which event the offense is a state jail felony.

(e) Subsections (a) and (c) do not apply if the person is related to the applicant within the second degree by affinity or the third degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code~~[-or is registered to vote at the same address as the applicant]~~. Subsection (c) does not apply to an employee of a state licensed care facility or state-certified facility not subject to state licensure where the voter resides who is working in the normal course of the employee's authorized duties.

(f) It is an affirmative defense to prosecution for an offense under this section that the person deposited carrier envelopes containing ballots voted by another person if the voter requested assistance from the person in depositing the envelope and that assistance was provided in the course of the person's normal duties as caretaker of the voter.

SECTION 2. Chapter 86, Election Code, is amended by adding Section 86.0052 to read as follows:

Sec. 86.0052. COMPENSATION OF ANOTHER FOR COLLECTING BALLOTING MATERIALS PROHIBITED. (a) A person commits an offense if the person compensates another person to engage in conduct prohibited by Section 86.0051(b-1).

(b) Except as provided by Subsection (c), an offense under this section is a misdemeanor punishable by:

(1) confinement in jail for a term of not more than one year or less than 30 days; or

(2) confinement described by Subdivision (1) and a fine not to exceed \$4,000.

(c) An offense under this section is a state

jail felony if it is shown on the trial of an offense under this section that the defendant was previously convicted two or more times under this section.

SECTION 3. Section 86.006(f), Election Code, is amended to read as follows:

(f) A person commits an offense if the person knowingly possesses an official ballot or official carrier envelope provided under this code to another. Unless the person possessed the ballot or carrier envelope with intent to defraud the voter or the election authority, this subsection does not apply to a person who, on the date of the offense, was:

- (1) related to the voter within the second degree by affinity or the third degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code;
- (2) registered to vote at the same address as the voter;
- (3) an early voting clerk or a deputy early voting clerk;
- (4) a person who possesses the carrier envelope in order to deposit the envelope in the mail or with a common or contract carrier and who provides the information required by Section 86.0051(b) in accordance with that section;
- (5) an employee of the United States Postal Service working in the normal course of the employee's authorized duties; [or]
- (6) a common or contract carrier working in the normal course of the carrier's authorized duties if the official ballot is sealed in an official carrier envelope that is accompanied by an individual delivery receipt for that particular carrier envelope; or
- (7) an employee of a state licensed care facility where the voter resides who is working in the normal course of the employee's authorized duties.

SECTION 3. Section 86.006, Election Code, is amended by amending Subsection (f) and adding Subsection (j) to read as follows:

(f) A person commits an offense if the person knowingly possesses an official ballot or official carrier envelope provided under this code to another. Unless the person possessed the ballot or carrier envelope with intent to defraud the voter or the election authority, this subsection does not apply to a person who, on the date of the offense, was:

- (1) related to the voter within the second degree by affinity or the third degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code;
- (2) registered to vote at the same address as the voter;
- (3) an early voting clerk or a deputy early voting clerk;
- (4) a person who possesses the carrier envelope in order to deposit the envelope in the mail or with a common or contract carrier and who provides the information required by Section 86.0051(b) in accordance with that section;
- (5) an employee of the United States Postal Service working in the normal course of the employee's authorized duties; [or]
- (6) a common or contract carrier working in the normal course of the carrier's authorized duties if the official ballot is sealed in an official carrier envelope that is accompanied by an individual delivery receipt for that particular carrier envelope; or
- (7) an employee of a state licensed care facility or state-certified facility not subject to state licensure where the voter resides who is working in the normal course of the employee's authorized duties.

(j) It is an affirmative defense to prosecution for an offense under Subsection (f) that the person possessed an official ballot or official carrier envelope

provided to a voter, other than the person, if the voter requested assistance from the person and that assistance was provided in the course of the person's normal duties as caretaker of the voter.

SECTION 4. Sections 86.010(g) and (h), Election Code, are amended to read as follows:

(g) An offense under this section is a state jail felony ~~[Class A misdemeanor]~~ unless the person is convicted of an offense under Section 64.036 for providing unlawful assistance to the same voter, in which event the offense is a [state jail] felony of the third degree.

(h) Subsection (f) does not apply if the person is related to the applicant within the second degree by affinity or the third degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code~~[-or is registered to vote at the same address as the applicant].~~

No equivalent provision.

SECTION 5. The changes in law made by this Act apply only to an offense committed on or after the effective date of

SECTION 4. Section 86.010(h), Election Code, is amended to read as follows:

(h) Subsection (f) does not apply if the person is related to the applicant within the second degree by affinity or the third degree by consanguinity, as determined under Subchapter B, Chapter 573, Government Code~~[-or is registered to vote at the same address as the applicant].~~

SECTION 5. Section 86.013(d), Election Code, is amended to read as follows:

(d) The following textual material, as prescribed by the secretary of state, must be printed on the reverse side of the official carrier envelope or on a separate sheet accompanying the carrier envelope when it is provided:

- (1) the prohibition prescribed by Section 86.006(b);
- (2) the conditions for delivery by common or contract carrier prescribed by Sections 81.005 and 86.006;
- (3) the requirements for the legal execution and delivery of the carrier envelope, including the limitation on depositing carrier envelopes containing ballots voted by other persons prescribed by Section 86.0051(b-1);
- (4) the prohibition prescribed by Section 86.006(e); and
- (5) the offenses prescribed by Sections 86.006(f) and 86.010(f).

SECTION 6. Same as introduced version.

this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 6. This Act takes effect September 1, 2013.

SECTION 7. Same as introduced version.